

AMENDED IN SENATE AUGUST 8, 2002

AMENDED IN ASSEMBLY MAY 28, 2002

AMENDED IN ASSEMBLY MAY 14, 2002

AMENDED IN ASSEMBLY APRIL 29, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2776

Introduced by Assembly Member Simitian

February 25, 2002

An act to amend Section 11010 of the Business and Professions Code, and to amend Sections 1102.6, 1103.4, and 1353 of the Civil Code, relating to aviation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2776, as amended, Simitian. Aviation: noise.

(1) Existing law requires any person who intends to offer subdivided lands within California for sale or lease to file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire that includes, among other things, the location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within 2 statute miles of the subdivision. Existing law requires that a copy of the public report of the Real Estate Commissioner, when issued, be given to the prospective purchaser by the owner, subdivider, or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision or upon request by any member of the public.

This bill would require the notice of intention filed with the application for a public report, to include a statement regarding whether the property is encompassed within an airport influence area, as defined.

(2) The Davis-Stirling Common Interest Development Act regulates common interest developments and defines the declarations and other governing documents that govern the operation of common interest developments and the associations that manage common interest developments. A declaration is required to contain specified information. Existing law provides that an owner of a separate interest in a common interest development must provide certain items to a prospective purchaser prior to transfer of title, including, among other things, a copy of the governing documents of the common interest development.

This bill would require that any declaration, recorded after January 1, ~~2003~~ 2004, contain a statement regarding whether the property is encompassed within an airport influence area.

(3) Existing law requires a seller of residential property, to make disclosures upon the transfer of that property, and sets forth the content and form of these disclosures in a Real Estate Transfer Disclosure Statement and a Natural Hazard Disclosure Statement. Existing law requires certain sellers of residential real property who have actual knowledge that the property is affected by or zoned to permit certain manufacturing, commercial, or airport uses to give written notice of that knowledge, as soon as practicable before transfer of title. Existing law requires the disclosure statement to advise a purchaser that other reports and disclosures, such as an inspection report, have or will be made in connection with the transfer.

This bill would revise the Real Estate Transfer Disclosure Statement to require that statement to advise the prospective purchaser of other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, *that* have or will be made in connection with the transfer.

(4) Existing law limits the liability of a transferor for failing to disclose natural hazards if the transferor obtains a report or opinion prepared by a licensed engineer, land surveyor, geologist, or expert in natural hazard discovery dealing with matters within the scope of the professional's license or expertise.



The bill would condition this limitation upon the expert in natural hazard discovery determining whether the property is within an airport influence area and if so, providing notice with the report or opinion.

This bill would provide that its provisions will become operative on January 1, 2004.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that the
2 current mechanisms for providing notice to homebuyers of
3 potential airport impact are inadequate, as evidenced by the
4 number of complaints and lawsuits regarding airport noise by
5 residents of surrounding communities.

6 SEC. 2. Section 11010 of the Business and Professions Code
7 is amended to read:

8 11010. (a) Except as otherwise provided pursuant to
9 subdivision (c) or elsewhere in this chapter, any person who
10 intends to offer subdivided lands within this state for sale or lease
11 shall file with the Department of Real Estate an application for a
12 public report consisting of a notice of intention and a completed
13 questionnaire on a form prepared by the department.

14 (b) The notice of intention shall contain the following
15 information about the subdivided lands and the proposed offering:

16 (1) The name and address of the owner.

17 (2) The name and address of the subdivider.

18 (3) The legal description and area of lands.

19 (4) A true statement of the condition of the title to the land,
20 particularly including all encumbrances thereon.

21 (5) A true statement of the terms and conditions on which it is
22 intended to dispose of the land, together with copies of any
23 contracts intended to be used.

24 (6) A true statement of the provisions, if any, that have been
25 made for public utilities in the proposed subdivision, including
26 water, electricity, gas, telephone, and sewerage facilities. For
27 subdivided lands that were subject to the imposition of a condition
28 pursuant to subdivision (b) of Section 66473.7 of the Government
29 Code, the true statement of the provisions made for water shall be
30 satisfied by submitting a copy of the written verification of the

1 available water supply obtained pursuant to Section 66473.7 of the
2 Government Code.

3 (7) A true statement of the use or uses for which the proposed
4 subdivision will be offered.

5 (8) A true statement of the provisions, if any, limiting the use
6 or occupancy of the parcels in the subdivision.

7 (9) A true statement of the amount of indebtedness that is a lien
8 upon the subdivision or any part thereof, and that was incurred to
9 pay for the construction of any onsite or offsite improvement, or
10 any community or recreational facility.

11 (10) A true statement or reasonable estimate, if applicable, of
12 the amount of any indebtedness which has been or is proposed to
13 be incurred by an existing or proposed special district, entity,
14 taxing area, assessment district, or community facilities district
15 within the boundaries of which, the subdivision, or any part
16 thereof, is located, and that is to pay for the construction or
17 installation of any improvement or to furnish community or
18 recreational facilities to that subdivision, and which amounts are
19 to be obtained by ad valorem tax or assessment, or by a special
20 assessment or tax upon the subdivision, or any part thereof.

21 (11) (A) As to each school district serving the subdivision, a
22 statement from the appropriate district that indicates the location
23 of each high school, junior high school, and elementary school
24 serving the subdivision, or documentation that a statement to that
25 effect has been requested from the appropriate school district.

26 (B) In the event that, as of the date the notice of intention and
27 application for issuance of a public report are otherwise deemed
28 to be qualitatively and substantially complete pursuant to Section
29 11010.2, the statement described in subparagraph (A) has not been
30 provided by any school district serving the subdivision, the person
31 who filed the notice of intention and application for issuance of a
32 public report shall immediately provide the department with the
33 name, address, and telephone number of that district.

34 (12) (A) The location of all existing airports, and of all
35 proposed airports shown on the general plan of any city or county,
36 located within two statute miles of the subdivision. If the property
37 is located within an airport influence area, the following statement
38 shall be included in the notice of intention:
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NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(B) For purposes of this section, an “airport influence ~~area~~” *area,*” *also known as an “airport referral area,”* is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission, ~~including an airport referral area.~~

(13) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(14) A true statement of whether or not fill is used, or is proposed to be used in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(15) Any other information that the owner, his or her agent, or the subdivider may desire to present.

(c) The commissioner may, by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention.

SEC. 3. Section 1102.6 of the Civil Code is amended to read:
1102.6. The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

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3 NOTE TO PRINTING OFFICE: INSERT CAMERA-READY
4 COPY HERE
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6 for Real Estate Transfer Disclosure Statement
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8 as printed on pages 9 to 13 of Chapter 926, 1996 Statutes.
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SEC. 4. Section 1103.4 of the Civil Code is amended to read:

1103.4. (a) Neither the transferor nor any listing or selling agent shall be liable for any error, inaccuracy, or omission of any information delivered pursuant to this article if the error, inaccuracy, or omission was not within the personal knowledge of the transferor or the listing or selling agent, and was based on information timely provided by public agencies or by other persons providing information as specified in subdivision (c) that is required to be disclosed pursuant to this article, and ordinary care was exercised in obtaining and transmitting the information.

(b) The delivery of any information required to be disclosed by this article to a prospective transferee by a public agency or other person providing information required to be disclosed pursuant to this article shall be deemed to comply with the requirements of this article and shall relieve the transferor or any listing or selling agent of any further duty under this article with respect to that item of information.

(c) The delivery of a report or opinion prepared by a licensed engineer, land surveyor, geologist, or expert in natural hazard discovery dealing with matters within the scope of the professional's license or expertise, shall be sufficient compliance for application of the exemption provided by subdivision (a) if the information is provided to the prospective transferee pursuant to a request therefor, whether written or oral. In responding to that request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of Section 1103.2 and, if so, shall indicate the required disclosures, or parts thereof, to which the information being furnished is applicable. Where that statement is furnished, the expert shall not be responsible for any items of information, or parts thereof, other than those expressly set forth in the statement. In responding to the request, the expert shall determine whether the property is within an airport influence area as defined in subdivision (b) of Section 11010 of the Business and Professions Code. If the property is within an airport influence area, the report shall contain the following statement:



NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

~~(d) If a Natural Hazard Disclosure Report, that includes a Notice of Airport in Vicinity described in subdivision (c), is delivered to a transferee in connection with the transfer of real property, a seller or broker is not required to provide additional information concerning, and the information is deemed adequate to inform the transferee regarding, airport-related annoyances that may affect real property.~~

SEC. 5. Section 1353 of the Civil Code is amended to read:

1353. (a) (1) A declaration, recorded on or after January 1, 1986, shall contain a legal description of the common interest development, and a statement that the common interest development is a community apartment project, condominium project, planned development, stock cooperative, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes. If the property is located within an airport influence area, a declaration, recorded after January 1, 2003 2004, shall contain the following statement:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(2) For purposes of this section, an “airport influence ~~area~~” *area,*” *also known as an “airport referral area,”* is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission, ~~including an airport referral area.~~

(3) The statement in a declaration acknowledging that a property is located in an airport influence area does not constitute a title defect, lien, or encumbrance.

(b) The declaration may contain any other matters the original signator of the declaration or the owners consider appropriate.

SEC. 6. This act shall become operative on January 1, 2004.